

FILED

DEC 07 2010

United States Bankruptcy Court
San Jose, California

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re] Case No. 10-52862-ASW
RAUL PADILLA MUNOZ,]
GUADALUPE M. PADILLA,]
Debtor.]
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GUADALUPE M. PADILLA,] Adv. No. 10-05119
Plaintiff,]
vs.]
JPMORGAN CHASE BANK, N.A.]
Defendant.]
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**MEMORANDUM DECISION GRANTING
DEFENDANT'S MOTION TO DISMISS**

Before this Court is the motion of defendant J.P. Morgan Chase Bank, N.A. ("Defendant") to dismiss the adversary complaint of plaintiff Guadalupe Padilla ("Debtor"). On September 22, 2010, Debtor filed an interim objection requesting a sixty day continuance to allow the court to sign an order indicating the automatic stay existed as to the bankruptcy estate. That order was signed on October 4, 2010. Defendant re-noticed the motion for

1 December 7, 2010. Plaintiff has filed no other objections. For
2 the following reasons, Defendant's motion is granted without leave
3 to amend because the statutes of limitations for all of Debtor's
4 causes of action have expired.

5 STANDARD OF REVIEW

6 The Ninth Circuit has stated that the standard of review for
7 motions to dismiss is as follows:

8 The nature of dismissal requires us to accept all
9 allegations of fact in the complaint as true and construe
10 them in the light most favorable to the
11 plaintiffs. However we are not required to accept as
12 true conclusory allegations which are contradicted by
documents referred to in the complaint, and we do not
... necessarily assume the truth of legal conclusions
merely because they are cast in the form of factual
allegations.

13 Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir.
14 2003) (citations and internal quotations omitted).

15 Further, the Ninth Circuit has held that "dismissal without
16 leave to amend is improper unless it is clear, upon de novo review,
17 that the complaint could not be saved by any amendment." Steckman
18 v. Hart Brewing, Inc., 143 F.3d 1293, 1296 (9th Cir. 1998)
19 (citations and internal quotations omitted).

20 BACKGROUND

21 Debtor purchased a home located at 1174 Turtlerock Drive in
22 San Jose, California ("the property") on April 6, 2005. Debtor
23 obtained a mortgage loan from Washington Mutual Bank, F.A. ("WAMU")
24 in the amount of \$560,000.00 in connection with the property. On
25 September 25, 2008, the Office of Thrift Supervision closed WAMU
26 and appointed the FDIC as receiver. On the same date, Defendant
27 entered into a purchase and assumption agreement with the FDIC
28 acting in the FDIC's corporate capacity as well as receiver for

1 WAMU. A Notice of Default and Election to Sell Under Deed of Trust
2 was recorded with the Santa Clara County Recorder's Office on July
3 20, 2009. A Notice of Trustee's Sale was recorded on October 23,
4 2009.

5 Debtor filed a chapter 13 bankruptcy case on March 23, 2010.
6 The bankruptcy petition was filed, among other reasons, to stay the
7 trustee's sale scheduled for the property. On May 12, 2010, The
8 Fuller Law Firm substituted in as counsel for Debtor. This Court
9 issued a temporary restraining order on May 19, 2010 enjoining the
10 foreclosure sale.

11 On July 9, 2010, this Court held that Debtor's request for a
12 preliminary injunction enjoining the foreclosure sale is
13 unnecessary and moot. As this is Debtor's second bankruptcy filing
14 within the past year, the automatic stay, pursuant to bankruptcy
15 code section 362(c)(3), expired within 30 days of the commencement
16 date of this case. Debtor failed to file a motion to re-impose the
17 automatic stay, so there is no automatic stay as to the debtor in
18 this case. However, the automatic stay is still in effect as to
19 the bankruptcy estate.

20 ANALYSIS

21 Debtor's first cause of action asserts a breach of section
22 2601 of the Real Estate Settlement Procedures Act ("RESPA").
23 Specifically, Debtor argues that Defendant failed to provide Debtor
24 with a good faith estimate within three days of submitting any loan
25 application. However, courts have found that RESPA provides for a
26 private right of action for violation of RESPA's provisions
27 relating to kickbacks and referral fees, and for violation of
28 RESPA's provisions relating to disclosures of possible assignment

1 or transfer of the loan, because such sections provide for treble
2 damages and attorneys' fees. Bloom v. Martin, 865 F. Supp. 1377,
3 1383-1386 (N.D. Cal 1994). The Bloom court found that the
4 remaining sections of RESPA did not contain any such provisions,
5 and accordingly found no private right of action.

6 Debtor's first cause of action is based upon the allegation
7 that RESPA was violated as Debtor was not provided with -- or
8 timely provided with -- a good faith estimate. However, section
9 2604 of RESPA does not provide for such a private right of action,
10 and thus Debtor's claim against Defendant for such a violation
11 fails as a matter of law.

12 Debtor may argue that Defendant's failure to inform Debtor of
13 the \$11,200 yield spread paid to broker was a kickback under RESPA
14 and thus a separate cause of action under section 2607. However,
15 the statute of limitations for a claim based on section 2607 of
16 RESPA is one year from the date of the occurrence of the violation.
17 The violation occurred on March 25, 2005 when Defendant provided
18 Debtor with the Truth in Lending disclosure. Debtor's claim was
19 not brought until May 2010. As such, the statute of limitations
20 for this claim expired four years ago.

21 Debtor's second cause of action asserting a breach of the
22 Truth in Lending Act ("TILA") -- is also time-barred. Debtor seeks
23 a rescission of the loan or, in the alternative, civil penalties.
24 15 U.S.C. section 1635(f) provides that any claim for rescission
25 must be brought within three years of consummation of the
26 transaction or prior to the sale of the property, whichever occurs
27 first. See also Murray v. Fifth Third Bank, 2007 WL 956916 (E.D.
28 Mich. 2007). As such, Debtor's right to rescind the loan has

1 expired because more than three years have lapsed since
2 consummation of the loan transaction. The loan transaction
3 occurred in April of 2005, but Plaintiff brought this action in May
4 of 2010, two years after the three-year statute of limitations had
5 expired.

6 Debtor's claim under TILA for civil penalties is also barred
7 by the statute of limitations. 15 U.S.C. section 1640(e) provides
8 in relevant part:

9 Any action under this section may be brought in any
10 United States district court, or in any other court of
11 competent jurisdictions, within one year from the date of
12 the occurrence of the violation.

13 In Tucker v. Beneficial Mortg. Co., 437 F. Supp.2d 584, 589 (E.D.
14 Va. 2006), the court held that the one-year statute of limitations
15 period applying to claims for civil damages arising from TILA
16 violations begins to run from the date of the complained violation.
17 In this case, the date of the loan transaction is apparent from the
18 recorded deed of trust. The loan transaction occurred in April
19 2005. Debtor did not bring this action until May 2010, four years
20 after the one-year statute of limitations expired.

21 Debtor's third cause of action for a violation of the equal
22 opportunity act under 15 U.S.C. section 1691(a) also fails as the
23 statute of limitations has expired. By the act's express terms,
24 the equal opportunity act is governed by a two-year statute of
25 limitations. 15 U.S.C. § 1691e(f). Debtor claims any purported
26 violation of the equal opportunity act occurred in the origination
27 of the loan in April 2005. Debtor did not bring this action until
28 May 2010, three years after the two-year statute of limitations
expired.

1 Debtor's fourth cause of action for a violation of the Fair
2 Housing Act under 42 U.S.C. section 3601 also fails as the statute
3 of limitations has expired. Section 3613(a) of the Fair Housing
4 Act provides:

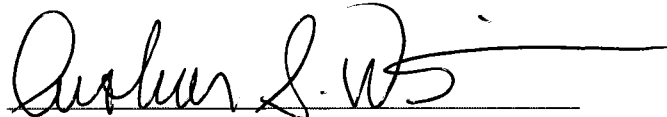
5 An aggrieved person may commence a civil action in an
6 appropriate United States district court or state court
7 not later than 2 years after the occurrence or the
termination of an alleged discriminatory housing
practice. . .

8 42 U.S.C. § 3613(a). In this case, the alleged "occurrence" in
9 violation of the Fair Housing Act was the issuance of the loan.
10 The loan closed in April of 2005. Debtor did not bring this action
11 until May 2010, three years after the two-year statute of
12 limitations expired.

13 Because each of Debtor's claims is time-barred, and there is
14 no claim on which relief can be granted, it is clear that the
15 complaint could not be saved by an amendment.

16 For the reasons set forth above, Debtor's complaint is
17 dismissed without leave to amend. Counsel for Defendant shall
18 prepare a proposed form of order consistent with this ruling and
19 shall submit the proposed order to the Court after serving counsel
20 for Debtor.

21
22 Dated: 12/7/10

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24 
25 ARTHUR S. WEISSBRODT
26 UNITED STATES BANKRUPTCY JUDGE
27
28

UNITED STATES BANKRUPTCY COURT
For The Northern District Of California

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